

To: Lincoln City Council

*From: Scott E. Holmes, REHS, MS
Manager, Environmental Public Health Division
Lincoln-Lancaster County Health Department*

Date: March 25, 2008

Re: Bill Control No. 08-36 LMC 28.02 Regulations for Illicit Discharges

A copy of EPA's "Report of Municipal Separate Storm Sewer System (MS4) Audit NPDES Permit No. NE-0133671" was received after the Ordinance Request Form and Fact Sheet for Bill Control No. 08-36 LMC 28.02 Regulations for Illicit Discharges was submitted to the City Clerk's Office. This is a report on EPA's audit of the City Lincoln's compliance with the Federal Clean Water Act, specifically our MS4 (storm water) National Pollution Discharge Elimination System (NPDES) permit, which was conducted in July 2007.

In the cover letter, EPA states the following:

"EPA is presently reviewing the findings of the report to determine Lincoln's compliance with the applicable statutes, permits or regulations. If it is determined that violations exist, EPA reserves all rights it may have to take appropriate enforcement actions." EPA penalties for violations of the Clean Water Act are up to \$32,500 per day for Class I and \$157,500 for Class II proceedings. (Please see

http://www.epa.gov/Region7/laws_regulations/CWA/public_notice_table_archive.htm for a list of 16 proposed civil penalties issued in 2007 in by Region VII EPA, which has authority in Iowa, Kansas, Missouri and Nebraska. Also of interest is EPA Region VII's information regarding a \$1.3 million civil penalty action against Home Depot in February 2008:

<http://yosemite.epa.gov/opa/admpress.nsf/0/DEEFA2FC0D012CA8B852573FB007A2B58>

The audit report itself is 18 pages, with three appendices which are evaluations of observed inspections of industrial sites, construction sites, and municipal operations. Of most relevance to Bill Control No. 08-36 is the following from the EXECUTIVE SUMMARY: "Allocation of Resources: The City should review its funding for the illicit discharge, industrial and municipal facility inspection program. Currently it appears that the City has allocated approximately 1/3 Full-time Equivalent (FTE) for all three of these program components combined." This is followed up in the report in section 2.4 Illicit Discharges and Improper Disposal on page 9: "Required action: In accordance with Permit Section II.A.2, the City must ensure legal authority to prohibit illicit discharges. Thus, the City must complete promulgation and implementation of the new illicit discharge ordinance to provide legal authority specific to the needs of the program (i.e., prohibit all non-storm discharges)." It is important to note that this is the only "Required Action" statement in the entire audit report.

Thus, EPA has made two things very clear. First, the City does not have enough staff resources devoted to the illicit discharge and industrial stormwater compliance. And second, in order for the City of Lincoln to be in compliance with its Federally enforceable MS4 NPDES permit, we must adopt regulations for illicit discharges. Thus, the passage of the ordinance and fee resolution are critical to assure we have adequate funding and staffing to comply with this Federal mandate and to decrease the City's vulnerability to EPA enforcement action.